

## § 21.334

## 38 CFR Ch. I (7–1–02 Edition)

(1) The veteran is eligible for benefits;

(2) The institution has accepted the veteran or he or she is eligible to continue his or her training;

(3) The veteran has notified the institution of his or her intention to attend or to reenroll;

(4) The number of semester or clock hours the veteran will pursue; and

(5) The beginning and ending dates of the enrollment period.

(e) *Time of advance payment.* VA will authorize advance payment only:

(1) At the beginning of an ordinary school year; or

(2) At the beginning of any other enrollment period which begins after a break in enrollment of one full calendar month or longer.

(Authority: 38 U.S.C. 3680(d))

(f) *Other payments.* (1) VA will make all payments other than advance payments at the end of the month for the veteran's training during that month.

(2) VA may withhold final payment until:

(i) VA receives certification that the veteran has completed his or her course; and

(ii) VA makes all necessary adjustments in the veteran's award resulting from that certification.

(Authority: 38 U.S.C. 3680(g))

(g) *Payments for courses which are repeated.* VA may pay subsistence allowance to a veteran who repeats a course under conditions described in § 21.132.

(Authority: 38 U.S.C. 3680(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.334 Election of payment at the Chapter 30 rate.

(a) *Election.* When the veteran elects payment of an allowance at the chapter 30 rate, the effective dates for commencement, reduction and termination of the allowance shall be in accordance with §§ 21.7130 through 21.7135 and § 21.7050 under chapter 30.

(Authority: 38 U.S.C. 1808(f), 1780)

(b) *Election of payment at the Chapter 30 rate subsequent to induction into a re-*

*habilitation program.* Election of payment at the Chapter 30 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under § 21.7131 in the case of a veteran who has elected payment at the chapter 30 rate; or

(2) The day following the end of the period for which VA paid tuition, fees or other program charges under this Chapter.

(Authority: 38 U.S.C. 3108(f))

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of change is earliest of the following:

(1) The date following completion of the term, semester, quarter, or other period of instruction in which the veteran is currently enrolled;

(2) The veteran's Chapter 30 delimiting date;

(3) The day after exhaustion of Chapter 30 entitlement; or

(4) The day following the date of a VA determination that failure to approve reelection would prevent the veteran from continuing the rehabilitation program.

(Authority: 38 U.S.C. 3108(f))

(d) *Election or reelection during leave or between periods of instruction—*(1) *Payment at the Chapter 30 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 3108(f))

## Department of Veterans Affairs

## § 21.344

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to chapter 30 benefits based on his or her chapter 34 eligibility as of December 31, 1989, and whose election of chapter 34 rates terminated as of the date under paragraph (e)(1) of this section must, if the individual desires payment at the chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989, 54 FR 13522, Apr. 4, 1989; 57 FR 57108, Dec. 3, 1992]

### LEAVES OF ABSENCE

#### § 21.340 Introduction.

(a) *General.* VA may approve leaves of absence under certain conditions. During approved leaves of absence, a veteran in receipt of subsistence allowance shall be considered to be pursuing a rehabilitation program. Leave may be authorized for a veteran during a period of:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living services.

(b) *Election of subsistence allowance.* If a veteran elects to receive subsistence allowance and payment of rehabilitation services by VA, he or she may be authorized leave of absence under §§ 21.342 through 21.350.

(c) *Election of benefits at the chapter 30 rate.* If a veteran elects to receive a subsistence allowance paid at the chapter 30 rate, the effect of absences is determined under §§ 21.7139 and 21.7154.

(Authority: 38 U.S.C. 1508(f) and 1510)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4285, Jan. 30, 1989; 57 FR 57109, Dec. 3, 1992]

#### § 21.342 Leave accounting policy.

(a) *Amount of leave.* A veteran pursuing one of the programs listed in § 21.340(a) may be authorized up to 30 days of leave by the case manager during a twelve-month period. The beginning date of the first twelve-month period is the commencing date of the original award, and the ending date is

twelve months from the beginning date, with subsequent twelve-month periods running consecutively thereafter.

(b) *Additional leave under exceptional circumstances.* A veteran in a program may be authorized up to 15 additional days of leave during the twelve-month period by the case manager under exceptional circumstances, such as extended illness or family problems.

(c) *Absence.* For the purpose of determining when a leave of absence may be authorized, a veteran who elects subsistence allowance shall be considered absent during any period in which he or she is:

(1) Not in attendance under the rules and regulations of the educational institution, rehabilitation center, or sheltered workshop;

(2) Not considered at work under the rules of the training establishment; or

(3) Not present at a scheduled period of individual instruction.

(d) *System of records.* An educational institution, training establishment, rehabilitation center, or other facility or individual providing training and rehabilitation services under Chapter 31 may utilize the same system of records to determine absence as the one used for similarly circumstanced non-veterans.

(e) *Change in rate of pursuit.* The amount of approved leave is not affected by the veteran's rate of pursuit of a rehabilitation program.

(f) *Charging leave.* VA shall charge 1 day of leave for each day or part of a day of absence from pursuit of a rehabilitation program.

(g) *Limitation on carrying leave over to another period.* The veteran may not carry over unused days of leave from one twelve-month period to another.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended by 56 FR 14649, Apr. 11, 1991]

#### § 21.344 Facility offering training or rehabilitation services.

(a) *Approval of leaves of absence required.* Leaves of absence normally must be approved in advance by the case manager when the facility offering training or rehabilitation services arranges for the leave. The approval of the case manager is required: